

**STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - LOS ANGELES**

In the Matter of)	Case No. 06-PM-10111 - RAH
)	
JOHN J. CRUTCHFIELD,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 81729,)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

The State Bar's Office of Probation, represented by Supervising Attorney Terry Goldade, filed a motion to revoke the probation imposed upon respondent John J. Crutchfield by the Supreme Court in case number S120832 (State Bar case no. 02-0-13501). (See Bus. & Prof. Code, § 6093 subds. (b) and (c)¹ and Rules Proc. of State Bar, rules 560, et seq.²) The Office of Probation also seeks to have respondent enrolled as an inactive member of the State Bar pursuant to section 6007, subdivision (d). Respondent did not participate in this probation revocation proceeding.

For the reasons stated below, the court finds by a preponderance of the evidence that respondent wilfully failed to comply with the terms and conditions of his probation as alleged by the State Bar, and that the requirements for inactive enrollment under section 6007, subdivision (d)(1) have been met. In view of the misconduct and the record as a whole, the court recommends that respondent's probation be revoked, that the previously ordered stay of suspension be lifted and that he be actually suspended from the practice of law for a period of

¹ All further references to sections are to this Code unless otherwise noted.

² All further references to rules are to these rules unless otherwise noted.

one-year. Further, the court orders that respondent be enrolled as an inactive member of the State Bar.

FINDINGS OF FACT

Respondent was admitted to the practice of law in the State of California in November 1978 and has been a member of the State Bar since then.

By order filed February 10, 2004, and effective March 11, 2004, the Supreme Court suspended respondent for one-year, stayed execution of that suspension, and placed him on probation for two-years on certain conditions, including that he be actually suspended for 60 days. Additional probation conditions required respondent to (1) submit quarterly reports attesting under penalty of perjury that he had complied with the California Rules of Professional Conduct and the State Bar Act, and (2) attend the State Bar's Ethics School and provide proof to the Office of Probation within one year from the effective date of the Supreme Court's order that he had passed the test given at the completion of Ethics School.

The Office of Probation sent respondent a letter dated February 20, 2004, outlining the terms and conditions of the probation. On or about August 3, 2004, a probation deputy from the Office of Probation spoke with respondent. During that conversation, respondent apologized for not timely filing his quarterly report due July 10, 2004. The report was filed on August 8, 2004.

On or about April 20, 2005, the Office of Probation sent respondent a letter informing him that his quarterly report due April 10, 2005, and his proof of completion of Ethics School due March 11, 2005, had not been received. Respondent was further informed that failure to file timely any required proof of compliance would result in a referral for review and determination of further action. The report due April 10, 2005, was filed on April 26, 2005.

On or about April 26, 2005, a probation deputy spoke with respondent. During that conversation, respondent was informed that he needed to file a motion to extend his time to complete Ethics School. Respondent said that he would prepare such a motion and would fax it with his quarterly report which was due April 10, 2005. No such motion was ever filed.

On or about September 1, 2005, a probation deputy spoke with respondent and reminded him that he had not yet filed his quarterly report due July 10, 2005, and that his deadline for complying with the Ethics School probation condition was March 11, 2005. Respondent said that he was not going to attend the Ethics School because he was suspended for not taking the Multisate Professional Responsibility Examination (MPRE) and that he did not intend to practice law. Proof of completion of the Ethics School was not filed. Respondent also did not file the quarterly reports that were due July 10, 2005, and October 10, 2005.

CONCLUSIONS OF LAW

Bad faith is not a requirement for a finding of culpability in a probation violation matter; “instead, a ‘general purpose or willingness’ to commit an act or permit an omission is sufficient. (Citations.)” (*In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 536.)

Pursuant to sections 6093(b) and (c) and rule 561, the court concludes that the State Bar proved by a preponderance of the evidence that respondent wilfully violated the conditions of his probation by (1) failing to file timely the quarterly reports due July 10, 2004, and April 10, 2005, and failing to file the quarterly reports due July 10, 2005, and October 10, 2005, and (2) failing to provide proof that he had attended Ethics School and passed the test by March 11, 2005.

MITIGATING AND AGGRAVATING CIRCUMSTANCES

No mitigating evidence was offered or is apparent from the record. In aggravation, respondent has a record of prior discipline. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b)(i).)³ As noted above, the discipline underlying this probation revocation proceeding was imposed by the Supreme Court by order filed February 10, 2004. In that matter, respondent stipulated that he held himself out as entitled to practice and actually practiced law when he was not an active member of the State Bar in violation of sections 6125 and 6126(b). Respondent had been suspended for failing to pay his State Bar membership

³ All further references to standards are to these standards.

fees and for failing to comply with his Mandatory Continuing Legal Education requirements, and practiced law in June 2002 in a single client matter while he was suspended. No aggravating circumstances were involved in this prior misconduct, and in mitigation, it was stipulated that respondent did not have a record of prior discipline.

The following additional aggravating circumstances are found: Respondent engaged in multiple acts of misconduct by failing to comply with multiple conditions of probation. (Std. 1.2(b)(ii).) Respondent significantly harmed the administration of justice as his failure to comply with the conditions of his probation made it more difficult for the State Bar to appropriately monitor respondent in seeking to insure the protection of the public and the courts. (Std. 1.2(b)(iv).) Respondent's failure to comply with the probation conditions after being reminded several times by the Office of Probation demonstrates indifference toward rectification of, or atonement for, the consequences of his misconduct. (Std. 1.2(b)(v).)

DISCUSSION

The State Bar requests that respondent's probation be revoked, that the stay of execution of the suspension previously imposed be lifted, and that respondent be actually suspended for one year. The court agrees that recommending the full amount of stayed suspension is warranted.

Protection of the public and rehabilitation of the attorney are the primary goals of disciplinary probation. (*In the Matter of Howard* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 445, 452; *In the Matter of Marsh* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 291, 298.)

Section 6093 authorizes the revocation of probation for a violation of a probation condition, and standard 1.7 requires that the court recommend a greater discipline in this matter than that imposed in the underlying disciplinary proceeding. However, the period of actual suspension recommended in the instant case cannot exceed the period of stayed suspension imposed in the underlying proceeding. (Rule 562.)

Respondent failed to comply with the quarterly reporting and Ethics School conditions of his probation. "At a minimum, quarterly probation reporting is an important step towards an

attorney probationer's rehabilitation because it requires the attorney, four times a year, to review and reflect upon his professional conduct in light of the minimum professional standards that are set forth in the Rules of Professional Conduct and the State Bar Act.” (*In the Matter of Weiner* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 759, 763.) Similarly, by providing learning in the ethical obligations of California attorneys, the State Bar's Ethics School is another important step toward rehabilitation. Respondent's failure to comply with these conditions coupled with his failure to participate in this proceeding raise serious concerns about his lack of insight and are a strong indicator that the risk of future misconduct is great.

The prior disciplinary order “provided [respondent] an opportunity to reform his conduct to the ethical strictures of the profession. His culpability in [the matter] presently under consideration sadly indicates either his unwillingness or inability to do so.” (*Arden v. State Bar* (1987) 43 Cal.3d 713, 728.) A lengthy period of actual suspension will allow time for introspection. Based on the above, the court concludes that the imposition of the full stayed suspension is warranted.

Respondent was suspended from the practice of law in July 1995 for failing to pay his Bar member dues and for failing to comply with his Mandatory Continuing Legal Education requirements, and he has remained ineligible to practice law since then.⁴ In addition, respondent was suspended in June 2005 for failing to take and pass the MPRE as ordered by the Supreme Court in case number S120832 (State Bar case no. 02-0-13501). Thus, at the expiration of the one-year actual suspension recommended here, respondent will have been ineligible to practice law for well over 11 years. To permit respondent to return to the practice of law under these circumstances without requiring a showing of his moral fitness and legal learning would defeat the rehabilitative and public protection goals of attorney disciplinary probation, the very goals

⁴ Pursuant to Evidence Code section 452, subdivision (d), the court takes judicial notice of respondent's State Bar membership records.

this proceeding is designed to protect. (*In the Matter of Howard, supra*, 2 Cal. State Bar Ct. Rptr. at p. 452.) Accordingly, the court concludes that respondent should be required to demonstrate his rehabilitation, present fitness to practice and present learning and ability in the general law pursuant to standard 1.4(c)(ii) before being permitted to return to the practice of law. (See *In the Matter of Luis* (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 759.)

DISCIPLINE RECOMMENDATION

_____The court recommends that the probation imposed in Supreme Court case number S120832 (State Bar case no. 02-0-13501) be revoked, that the previous stay of execution of the suspension be lifted, and that respondent John J. Crutchfield be actually suspended from the practice of law for one year and until he has shown proof satisfactory to the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law pursuant to standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct, with credit for the period of his inactive enrollment ordered herein pursuant to Business and Professions Code section 6007, subdivision (d).

It is also recommended that respondent be ordered to comply with the requirements of rule 955 of the California Rules of Court within 30 calendar days of the effective date of the Supreme Court order in this matter, and file the affidavit provided for in paragraph (c) of this rule within 40 days of the effective date of the Supreme Court order in this matter.⁵

It is not recommended that respondent again be ordered to take and pass the Multistate Professional Responsibility Examination as he was ordered to do so in Supreme Court case number S120832 (State Bar case no. 02-0-13501).

⁵Respondent is required to file a rule 955(c) affidavit even if he has no clients. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 130.)

COSTS

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and that the costs be enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment

ORDER REGARDING INACTIVE ENROLLMENT

Respondent was subject to a stayed suspension, has been found to have violated his probation conditions, and a period of actual suspension due to said violations has been recommended. Accordingly, the requirements for respondent's involuntary inactive enrollment pursuant to Business and Professions Code section 6007, subdivision (d)(1) have been met:

It is therefore ordered that respondent John J. Crutchfield, member number 81729, be enrolled as an inactive member of the State Bar of California pursuant to Business and Professions Code section 60007, subdivision (d), effective three days following service of this order.

Dated: March 6, 2006

RICHARD A. HONN
Judge of the State Bar Court